

**CITY OF GERMANTOWN PLANNING COMMISSION
MINUTES OF MEETING HELD JANUARY 26, 2022**

The City of Germantown Planning Commission met on January 26, 2022 at 7:00 p.m. in the City Building Council Chambers.

MEMBERS PRESENT:

The following members were present at the Call to Order: Mrs. Izor, Mr. Jones, Mr. Wisner, Mr. Rettich, and Mrs. Berry.

ALSO PRESENT:

Mr. George Reinke representing Mr. Rauch the Applicant; Mr. Lance Oakes, Developer; Mr. Tom Schiff, City Attorney; Mr. Chip Warrig, Public Services Operation Manager and Mr. Keith Brane, City Planner.

ELECT 2022 CHAIR AND VICE CHAIR:

On a motion by Mr. Jones, seconded by Mr. Wisner, it was moved to elect Whitney Izor to serve as Planning Commission Chair for the year 2022. With no further nominations, a roll call vote was as follows: Mr. Jones, yes; Mr. Wisner, yes; Mrs. Berry, yes; Mr. Rettich, yes; and Mrs. Izor, yes. Motion carried.

On a motion by Mrs. Izor, seconded by Mr. Rettich, it was moved to elect Larry Wisner to serve as Planning Commission Vice-Chair for the year 2022. With no further nominations, a roll call vote was as follows: Mrs. Izor, yes; Mr. Rettich, yes; Mr. Jones, yes; Mrs. Berry, yes; and Mr. Wisner, Yes. Motion carried.

CONSIDER APPROVAL OF THE MINUTES OF THE OCTOBER 27, 2021 PLANNING COMMISSION MEETING:

On a motion by Mr. Jones, seconded by Mr. Wisner, it was moved to approve the minutes of the October 27, 2021 meeting as written. On call of the roll: Mrs. Izor, yes; Mr. Jones, yes; Mrs. Berry, yes; Mr. Wisner, yes; and Mr. Rettich, yes. Motion carried.

OLD BUSINESS:

Chair Whitney Izor recapped the request for a Planned Unit Development Overlay for the continued development of Bearcreek Estates proposed to contain 82 individual lots for detached single family homes.

Mr. Brane said since our last meeting you have received a traffic impact study, traffic counts, concept plan with lots colored in, and remaining tracts A and B sketch clarification involving areas that would not be in this approval. You also received the TEC review provided 11-12-21. Mr. Reinke has redesigned this addressing concerns over width to depth ratio, preservation of trees, and sewer connections. Number of lots has gone from 84 to 82, no lots exceed the 1 to 3 depth ratio, front yard setbacks have been reduced from 50' to 35' so most of the clearing is in the front yard, and rear yard setbacks will increase to 50'. The plan indicates only 2 lots that might have to pump waste and will be determined by the actual house design. All lots will be ½ acre or larger and they will submit a plan showing example footprints on each lot. Open space has been increased to 27.3 acres and they will be requesting to rename the subdivision to "Twin Creek Reserve" with Bearcreek Farms, Inc. remaining

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the property owner. They would like to remove remaining tracts A and B from the plat and Dupps would like to purchase the area on their side of the creek.

Mr. Brane said there are a couple of conditions at this time.

Recommendation:

Provided the Planning Commission is satisfied the project may be harmoniously integrated in such a way as to be consistent and compatible with surrounding, existing zoning districts and established uses and sufficient information has been provided, Staff would not be opposed to the establishment of the Bearcreek Farms Residential PUD Overlay district subject to the following conditions:

1. All requested comments and corrections generated as a result of the TEC review of the revised TIS shall be incorporated into a revised document acceptable to the City Engineer.
2. Recommendations generated as a result of the TEC review of the provided TIS shall be implemented and provided in manner and methods acceptable to the City Engineer.

Mr. Brane said since writing the staff report I thought you might want to make the sketch plan an attachment to the approval so the density is set and we all have the same thing on paper moving forward. Staff is recommending approval of the 82 lot layout.

Mrs. Izor asked how tracts A and B work under the existing overlay. Mr. Brane said we have an existing overlay and there are no provisions to modify that so we are creating a new overlay over the top of that. Planning Commission has seen few iterations and this latest iteration is taking into consideration your concerns. I would like to see everything stay in the original acreage simply because it was passive before and it will be passive now and there will be a new plan on part of it.

Mr. Rettich asked if Dupps purchased the land would they be coming back to do a different overlay before they could use the land. Mr. Brane said yes.

Mr. Jones said it does appear to be different than what City Council approved by ordinance in 2017, about 5% of the land, regardless of whether or not it is useable, I don't think that matters. To me the issue is it's not what Council approved in 2017. Maybe Planning Commission can amend that in a recommendation, maybe not, I would hate for this to go through preliminary and final plat approval and somebody say that's not the same plat Council approved in 2017.

Mrs. Izor said I still have questions about lots 42, 43, and 49 which are unusual. Also 42 and 43 appear to be overlapping. Did we ask the developer why those lots were created? Mr. Reinke said that is where the sewer will come up and we thought it would be better in case the owner would ever have to repair it.

Mr. Rettich said if we were to approve this and the frontages are not following the ordinances we already have, are we going to be grandfathering other people to do the same? Mr. Schiff said you mean outside the PUD; no. Mr. Rettich said if we approve this one, can't they have the same argument that their frontage wasn't the same when we approved it, why can't we approve theirs. Mr. Schiff said you could try but I don't think you would be successful. PUD's are all individual and gives the

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developer flexibility beyond what they would normally have to comply with. If you asking if we are setting precedence with this, the answer is no.

Mr. Rettich said last year we had someone try to rename a development Twin Creek Reserve and we wouldn't allow it. We already have a public park in Germantown named that. Mr. Reinke said we can change that.

Mrs. Izor I noticed in previous minutes that Mr. Brane had stated that clearing of more than one acre of land becomes an EPA issue yet I noticed there was already some clearing for a road. How is the road underway already? Mr. Reinke said it could be regrading to bring the sewer up. Mr. Jones said he thought grading issues are typically held at the preliminary plat level and this is still a concept.

Mrs. Izor said just to be clear, this is an overlay overtop the existing overlay.

Mr. Lance Oakes of Design Homes, 8534 Yankee Street, Dayton, Ohio asked to speak. Mr. Schiff asked what his relationship was with the applicant. Mr. Oakes said they just asked me for my support; they knew I had been looking at Germantown and had worked with some of the members of staff on some other sites and just asked if there was any way I could help. Plus, we are a large custom builder in south Dayton and if this project got approved we are in support of it and would be interested in building in the community. Mr. Schiff said in a Zoom meeting a few weeks ago you stated you didn't think the development would be profitable at 82 lots. Mr. Oakes explained what information he looked at as a developer as far as frontages, cost of the roads, and how that all affects the cost of the lot. Mr. Schiff said so you are a prospective builder. Mr. Oakes said correct. Mr. Schiff said I took some quotes from that meeting and one was "it's reasonable that the project would turn no profit because the construction costs were too high per lot". On behalf of the City, they have some concerns on starting a project that never gets finished. Mr. Oakes said that quote applies to any development moving forward across any county. Mr. Schiff said I don't care about anywhere else and maybe that is the analysis that would go on in any community around here but if it projects here, my question is still the same, which is, is there a concern on your part at all that this is a project that will not get completed. The City clearly doesn't want that. Mr. Oakes said I understand that but that is any development, anywhere, at this time. Right now these products for these lots are going to be 750+ and there is no data available to show that's a recipe for success. If you guys are willing to take the risk, that's on them. I can't guarantee this will be successful, that's land development. What I commented on that Zoom was that I, as a developer, for what I do and my risk profile, wouldn't be here today at \$750,000+ lots. Mr. Schiff said you did say that because no research exists on this point for Germantown or other surrounding municipalities in today's market. I'm not suggesting you misled or anything, please don't hear that the wrong way, I apologize if that's the way it came across. I just want to know on behalf of the city if it is a concern the project will not get finished. I don't know why you would enter into a project that would not be profitable and that's clearly not the issue either accept for the fact that it may not be completed.

Mr. Reinke said we have a different way we are approaching the project than Mr. Oakes does. He does more high volume things with builders who come in with less price and smaller homes with smaller lots. We are going for a higher market. We also have people employed and own the property that do subdivision and development work and we will be able to do some of this without outside people coming in.

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Mr. Wisner said I think the discussion is getting beyond what we need to be concentrating on tonight. We are looking at a concept proposal to change the PUD overlay to allow this concept of 82 lots. The bigger question, as a whole for Germantown, is do we want to have this kind of development and is that is beneficial to the City.

Mrs. Izor said I agree with the questions and concerns. We having been reviewing this for quite a while and the more information you hear, it actually creates more confusion than clarity. I think it's a good idea to step back and look at this as a whole and say, is this something we feel is in the best interest for Germantown.

Mr. Jones said I agree with Mr. Schiff that we are not concerned about profit but what I'm hearing from Mr. Oakes is you need 2 to 4 times more density than what is on here. You told us 42 lots won't work and now you're saying 82 will work but Mr. Oakes is saying this may not work. We had a development that didn't build out and Council had to change the subdivision regulations for a great number of lots that are now nonconforming. What it sounds like is we are doing you a favor by putting in 82 lots but you may not turn a profit on this and you are not helping. Mr. Wisner is right; we are here to look at what we have right here. I wasn't confused but now I am confused. In my opinion we need to make a motion in the positive, vote on this tonight, and see what happens.

Mr. Oakes said I apologize if I created confusion; I'm just here to help out the applicant and I'm not saying this is not going to be a success. In my opinion, custom builders are going to be looking for quality lots and this will give them the quality lots that are not available in south Dayton moving forward. It's just that the product has not been tested on this scale in Germantown. I've met with no less than probably 2 dozen municipalities over the last couple weeks and they would love to see this type of development come before them. I'm not saying this won't be a success, there's just no data to prove that. Municipalities that have this type of developments are all built out. I think this could do very well. I'm probably one of the largest single family residential developers in the Dayton Market and I also chair the Homebuilder's Association for the Developers and Large Builders Council. This is just a little different metrics than what I am used to out in this market. So if I gave any confusion as to whether this project is going to be a success, I apologize. Mr. Schiff said that was the only reason I asked; I wasn't trying to challenge you, I just wanted some clarification. Mr. Oakes said this is a quality development and those are going to be beautiful lots; it just lends itself to a high dollar value. If there are concerns, I have these same concerns in just about every community in the Dayton market.

Mr. Jones said there are only a few municipalities in the Dayton area that are landlocked so I don't understand when you say there is not another piece of land like this unless you are referring to the topography. Mr. Oakes said there is no land where a developer is willing to put on these quality lots at this time in the south Dayton market. There are very few, if any, lots for custom builders as opposed to production builders. Mr. Jones said it's confusing to me to have 6 or 7 different developers in a PUD; I have a concern regarding some consistency.

Mr. Reinke asked Mr. Jones, when you are using the term developer, are you talking about builders. Mr. Jones said yes. Mr. Reinke said I have done large developments, 500 lots in Bellbrook, Washington Township, etc. where there were 6 or 7 different builders in a PUD like this and those were very successful. We keep control over the quality, elevations, construction, landscaping, and everything that goes is. All are custom builders; some only build 8 homes a year. There is a place for Ryan Homes but that's not what we are trying to do here.

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Mr. Brane said just to reiterate, staff has reviewed the plans and finds no technical issue. We required a traffic impact study which was completed and everyone agreed no major work needed to occur. The lots are ½ to 1 acre in size. The decision to increase the number of lots lays with the Planning Commission and ultimately, City Council. The issue will be heard by City Council regardless of Planning Commission's decision. There's no sage advice I can give at this time; the housing market is unusual and these are very high end homes. Balancing all the concerns is the hard part and I'm proud we were able to present a complex set of questions. I would like to think the cutting in of the roads was enthusiasm to get it started.

On a motion by Mr. Jones, it was moved to approve the concept plan Case# RZ21-02 for 91.7 acres minus tract A at 2.5 acres and tract B at 2.3 acres.

Mr. Brane asked if Mr. Jones wanted to make the sketch plan an attachment of the approval as recommended. Mr. Jones said I mentioned the two lots. Mr. Brane said we'll make that attachment 1.

With no further questions; Mrs. Izor seconded the motion. On call of the roll: Mr. Jones, no; Mrs. Izor, no; Mrs. Berry, no; Mr. Wisner, no; and Mr. Rettich, no. Motion failed.

Mr. Reinke said normally when a recommendation is against an approval the board would describe why it was turned down. Mr. Schiff said the minutes will probably explain it but it's up to the Planning Commission if you want to respond.

Mrs. Izor said I think we can summarize what our concerns have been; the context for this kind of density doesn't seem to make a lot of sense for the surrounding area. I think there is a lot of concern for the topography and the land clearing, regardless of the open space that's been defined, simply to get building pads there and the amount of clearing that would have to happen. I think there is a lot of concern about the effect that would have on the site. I think the more we ask questions, the more confusion is created and we even have Mr. Oakes here and we're not clear on what his involvement is even though it seems he has spoken on behalf of the developer and land owner. There just seems to be quite a lot of risk here knowing if this is really right for our community or if this would be successfully completed in a timely manner. We also are unsure as to, we hear things like custom homes and high end but we don't have anything here that would support that understanding.

Mr. Rettich said this wasn't what we originally agreed to. You came before us with 40 some houses with a private road the city wouldn't have to take care of with a gate on it; now you want 82 house with a public street we are going to service and maintain. You've already cut a road where you said you were going to build the 40 some houses where you were going to preserve the area and keep the trees and try to make it nice. You cut a road you are not even going to use other than the main entryway. So from what you've told us in the past and what you are telling us now; everything doesn't add up.

Mr. Jones said my first comment is about the change in the overlay from 2017 that Council approved by ordinance based on the description of the property. The 82 lots; if I was on the fence before this meeting, I'm even more confused now. If the angle of the person you brought in is you are taking the risk even though the market is unsure; maybe we need more than 82 lots. I'm concerned it wouldn't be built out; I've seen that already, I've lived through it. We've seen that and it still sits there. I'm concerned this development could fail based on what's been said. As Mr. Rettich has stated before, we

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really don't have a lot of unimproved property with trees and streams and squirrels and other animals my wife and I see when we go out walking in German Township. I'm just confused and I'm unsure this is going to work.

ADJOURNMENT:

On a motion by Mr. Wisner, seconded by Mr. Rettich, it was moved to adjourn. All were in favor; none were opposed. The meeting adjourned at 7:56 p.m.

Whitney Izor
Chair, Planning Commission

Keith A. Brane
City Planner